Nos. 62 and 63.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No. 62

G. S. NICHOLAS & CO., et al.,
Petitioners,

v.

THE UNITED STATES.

No. 63

ALEX. D. SHAW & CO., et al.,
Petitioners,

v.

THE UNITED STATES.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

BRIEF FOR THE UNITED STATES.

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Authorities Cited.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

BRIEF FOR THE UNITED STATES.

Statement of the Case.

These cases are here on writs of certiorari to review judgments of the Court of Customs Appeals rendered May 12, 1916 (R. 72; 7 Ct. Cust. Appls. 97), affirming a decision by the Board of United

States General Appraisers (R. 16; T. D. 35595) which overruled importers' protests (R. 7-8 and 9-10) against the action of collectors of customs at Boston and New York, assessing additional or countervailing duties on whisky and gin imported from Great Britain (R. 9 and 10). The board's decision also overruled protests arising at Chicago and Los Angeles (R. 22); but as to those protests there is no appeal.

Under the laws of Great Britain a certain "allowance" is paid by the British Government to exporters of potable spirits, to wit, threepence per proof gallon on plain British spirits and fivepence per proof gallon on British compounded spirits. The only question involved in these cases is whether that allowance constitutes a bounty or grant which subjects such spirits, upon their importation into the United States, to an additional duty under paragraph E, section IV, tariff act of October 3, 1913 (38 Stat. 114, 193), which reads:

> E. That *whenever any country,* dependency, colony, province, or other political subdivision of government *shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country,* dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, *then upon the importation of any such article or merchandise into the United States,* whether

> the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, *there shall be levied and paid,* in all such cases, in addition to the duties otherwise imposed by this Act, *an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.* The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

The Secretary of the Treasury has ascertained, determined, and declared the net amount of the bounty or grant which it is claimed is paid or bestowed upon the exportation of spirits from the United Kingdom. He declared that the allowance on whisky is 3d. per gallon, and on gin 5d. per gallon (T. D. 34466; T. D. 34752). (Copies of those treasury decisions are printed as Appendix A.) On the instant importations the collectors of customs levied additional duties accordingly (R. 9 and 10). The Board of General Appraisers unanimously affirmed the collectors' assessments (R. 16-22); and the Court of Customs Appeals unanimously affirmed the board's decision (R. 55-72).

A clearer statement of the nature and effect of the allowance can be made by first outlining the British excise and customs duties on spirits.

The British Duties of Customs and Excise.

Customs Duties.

The import duty upon spirits when imported in casks runs from 15s. 1d. to 15s. 3d. per proof gallon; and when imported in bottles from 16s. 1d. to 16s. 3d. (p. 18, exhibit 4).

Excise Duties.

The excise duty on spirits distilled in the United Kingdom is 14s. 9d. per proof gallon (p. 33, exhibit 4).

Warehouses.

After distillation spirits must forthwith be conveyed to the distiller's spirit store but they cannot remain there more than ten days (section 13; subsection 9 of section 38; and subsection 4 and 8 of section 43, Spirits Act of 1880). The spirit store is simply a place for temporary storage. It is not a statutory warehouse.

On removal from a spirit store spirits may be warehoused without payment of the excise duty, either in the distiller's warehouse or in a general warehouse. The purpose for which warehouses are approved is the secure keeping of dutiable goods until the duty is paid or the goods are exported

(pp. 355, 446, exhibit 4). A distiller's warehouse is a private warehouse located on the distiller's own premises. Therein he may store only spirits distilled on the same premises (p. 86, part 3, exhibit 2). General warehouses are for the accommodation of the public. They may be either crown warehouses (i. e. owned by the government) or private warehouses officially approved. There are two classes of general warehouses, viz., excise warehouses and customs warehouses (sections 3, 49, 50, 54, 56 and 57, Spirits Act of 1880).

The definitions of and distinctions between crown, customs, excise, and general warehouses on page 22 of petitioners' brief in the Shaw case are erroneous. An excise warehouse may be either a crown or a private warehouse. It is one which is either approved or provided by the Commissioners of Excise as a general warehouse for the deposit of spirits. Likewise a customs warehouse is one which is either approved or provided by the Commissioners of Customs for the deposit of spirits (section 3, Spirits Act of 1880). The enactments relating to goods liable to excise duty which are in an excise warehouse also apply to such goods when they are in a customs warehouse; and the enactments relating to goods liable to customs duty which are in a customs warehouse also apply to such goods when they are in an excise warehouse (p. 349, exhibit 4). For the purposes of this case, there is no distinction between goods warehoused in the two classes of general warehouses.

Excise duties must be paid when spirits are withdrawn from warehouse for home consumption (section 75, Spirit Act of 1880), except that when withdrawn for certain industrial uses spirits may be exempted from the excise duties (section 8, Finance Act of 1902). The statement on page 2 of petitioners' brief in the Nicholas case that an excise tax is not imposed on spirits as such, but only on potable spirits when entering into domestic consumption, is not accurate. The tax is imposed on all spirits as such, but those which are put to certain uses are exempted from the payment of the tax.

All potable British spirits consumed in the United Kingdom pay the excise tax; but when exported they are exempt therefrom. In levying the countervailing duties in the instant cases the collectors did not treat the exemption as a bounty or grant. The Board of General Appraisers suggested that possibly the reason why such a countervailing duty was not imposed was because the amount of the domestic tax may have been considered in finding the market value (R. 21). The Court of Customs Appeals also referred to the question (R. 62-63). There is before this court no question growing out of the exemption of the imported spirits from the British excise tax. The only question now here arises because of the assessment of a countervailing duty equal to the "allowance."

The British statutes granting allowances on spirits.

The allowance was instituted by section 4 of the Spirits Duties Act of 1860. It was extended by Section 12 of Chapter 98, 28 and 29 Vict., 1865. Both statutes were repealed by section 10 of the Customs and Inland Revenue Act of 1885, section 3 of which is the earliest extant act granting an allowance on spirits. When reading that statute one needs bear in mind the following definitions taken from the third section of the Spirits Act of 1880:

"Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds or preparations, made with spirits.

"Low wines" means spirits of the first extraction conveyed into a low wines receiver.

"Feints" means spirits conveyed into a feints receiver.

"British spirits" means spirits liable to a duty of Excise.

"Plain spirits" means any British spirits, (except low wines and feints,) which have not had any flavour communicated thereto or ingredient or material mixed therewith.

"Spirits of wine" means rectified spirits of the strength of not less than forty-three degrees above proof.

"British compounds" means spirits redistilled or which have had any flavour communi-

cated thereto, or ingredient or material mixed therewith.

"Foreign spirits" means all spirits and strong waters liable to a duty of Customs.

Low wines and feints are impure spirits, a product of distillation which never leaves the distillery in such state (T. D. 34466).

Section 3 of the Customs and Inland Revenue Act of 1885 reads:

> 3.—(1) Where any spirits distilled and rectified in the United Kingdom *are exported from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied*, there shall be paid in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances; that is to say,—
>
> In respect of plain British spirits, and spirits of the nature of spirits of wine, an allowance of twopence, and
>
> In respect of British compounded spirits, an allowance of fourpence.
>
> (2) The allowance shall be paid, in the case of spirits exported, to the person who shall have given security for the exportation, and in the case of spirits used in warehouse, to the person upon whose written request the spirits shall have been so used.

There is no specific definition of "spirits of the nature of spirits of wine," but in practice the words

are interpreted as identical with the words "spirits of wine," as above defined (T. D. 34466).

It should be noted that after distillation and before their use as beverages spirits are commonly subjected to various operations. None of those operations can be applied while the spirits are in a spirit store. In a distiller's warehouse they may be vatted, blended, or racked (p. 356, exhibit 4); but all other operations (such as reducing, bottling, sweetening, coloring, etc.) have to be performed in an excise or customs warehouse (sections 43, 44, 64, 67, 68, 69, 70, 87-89 of the Spirits Act of 1880).

The effect of the act of 1885 was somewhat changed by section 5 of the Finance Act of 1902 which contains the following:

> (2) For the purpose of section three of the Customs and Inland Revenue Act, 1885, spirits shall be deemed to be British plain spirits, or spirits in the nature of spirits of wine, and not to be British compounded spirits, unless they are proved to the satisfaction of the Commissioners of Inland Revenue to have been distinctly altered in character by re-distillation with or without the addition of flavouring matter.

The effect of the act of 1885 was further changed by the following provision in the Revenue Act of 1906:

> 8. The word "by" shall be substituted for the word "without" in subsection (2) of section

five of the Finance Act, 1902 (which relates to the allowance on spirits).

By the Finance Act of 1902 the allowances of twopence and fourpence were increased to "respectively threepence and fivepence," at which amounts they now remain (R. 35, 43).

THE ALLOWANCE ON INDUSTRIAL SPIRITS.

An allowance on industrial spirits was granted by the Finance Act of 1895, the sixth section of which granted "to the exporter" of methylated spirits an allowance of twopence per gallon.

The allowance for industrial spirits was broadened by section 1 of the Finance Act of 1906, which contains the following provision:

> Where any spirits are *used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902,* the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received, as the case may be, in respect of those spirits as is payable on the exportation of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

Section 4 of that act defined "industrial methylated spirits" as "any methylated spirits (other than mineralized methylated spirits) which are intended for use in any art or manufacture in the United Kingdom." Thus the Finance Act of 1906 covered those methylated spirits upon which an allowance had been granted by the sixth section of the Finance Act of 1895, which section was consequently superseded by the act of 1906. (This statement is confirmed by the 32nd Edition of Chronological Table and Index of the Statutes.)

The reference in the act of 1906 to the Finance Act of 1902 may be best explained by quoting from sub-section 1 of section 8 thereof:

> Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorise that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty:

Comment on certain portions of the Nicholas brief.

Thus we see that section 3 of the Customs and Inland Revenue Act of 1885 and section 1 of the

Finance Act of 1906 are the statutes which grant allowances on British spirits. The act of 1885 grants an allowance on spirits which are used as beverages, and the act of 1906 grants an allowance on spirits which are put to industrial uses.

Because the American consul at Edinburgh stated that the act of 1885 is "the *original* law granting an allowance on the exportation of whisky" (R. 40-41), petitioners' brief in the Nicholas case says (p. 29) that "the consul's investigations, if not superficial were at least not thorough." Even if the consul's use of "original" were incorrect, would that be adequate ground for discrediting his investigations? Is the Nicholas brief to be stigmatized as either "superficial" or "not thorough" merely because at the bottom of page 3 it says that the acts of 1860 and 1865 relative to allowances are "applicable laws of Great Britain," disregarding the specific repeal of those acts by section 10 of the Customs and Inland Revenue Act of 1885? Evidently the consul knew the fact. The act of 1885 is the earliest extant statute granting an allowance, and when read as a whole the consul's report (R. 40-41) is not misleading.

Pages 17-18 and 47 of the Nicholas brief are misleading in so far as they state that the allowance is paid on additional classes of spirits. The brief says (p. 18) that the allowance is paid on "British spirits for use, duty free, at universities and colleges, etc."; and on "British spirits when

used as naval or ships' stores." Those are not additional classes.

Pages 61 and 165, part 1, Ham's Year Book (exhibit 2) show that the allowance to universities and colleges is paid under the same statute as the allowance to users in the arts, viz., section 1 of the Revenue Act of 1906. The allowance to universities is paid only on spirits which are used in laboratories (p. 165, exhibit 2). In short, it is an allowance on spirits put to industrial uses.

As authority for the payment of an allowance on spirits used as naval or ships' stores petitioners' brief cites "G. O. No. 6, 1887" which is cited on p. 105 of exhibit 4. Is it not probable that "G. O. No. 6, 1887" indicates an administrative ruling made in 1887 by some official body such as the Commissioners of Inland Revenue, which ruling is cited as General Order No. 6, 1887? In 1887 the only statute granting an allowance was section 3 of the Customs and Inland Revenue Act of 1885, which granted the allowance on spirits which are exported. Page 105 of exhibit 4 shows that spirits which have been shipped as ships' stores are treated as spirits which "have been exported"; and the note at the bottom of the table of allowances on pages 43 and 44, part 3, Ham's Year Book (exhibit 2) contains the following: "By the word 'exported' is also meant 'shipment as stores.'"

Brief of Argument.

ARGUMENT

I.

The allowance is paid on all potable spirits exported from the United Kingdom.

The Customs and Inland Revenue Act of 1885 provides for the payment of an allowance on spirits which are exported "from an excise or customs warehouse." Assuming that spirits are exported from other classes of warehouses, petitioners' briefs assert that not all exported spirits get allowances.

Even on an actual exportation from a distiller's warehouse an exporter may get the allowance. The exporter may be either the distiller himself or one to whom the distiller has sold the spirits (section 63, Spirits Act of 1880). On merely *conveying* spirits from a distiller's warehouse to an excise warehouse (without actually *depositing* them therein), the proprietor of spirits may "make an entry thereof * * * for exportation * * * and thereupon the spirits of which entry is so made shall be considered as if they had been actually deposited, and may be delivered and removed accordingly." (Section 73, Spirits Act of 1880.) Thus, at a trifling expense for drayage, an exportation from a distiller's warehouse becomes constructively an exportation from an excise warehouse with the attendant benefit of the allowance.

Inasmuch as the cost of producing plain spirits in 1905 was, roundly, 9d. per proof gallon (R. 36-37), it is obvious that no exporter would neglect to get the allowance of 3d. per gallon which is said to be "a fair wholesale profit" (R. 43).

Even if the record were silent on the point, it could be confidently asserted that in commercial transactions no spirits are exported from the United Kingdom without the benefit of the allowance. Practical business men do not lightly cast aside financial rewards from their governments. No one doubts that the great distilling interests of the United Kingdom are in the hands of practical business men. But the record is not silent. There is a statement by "Mr. Peter Dawson, one of the largest Scotch distillers," that the allowance is given "upon so much" of the distiller's product as "being potable is exported from the country"; that the payment "is allowed * * * against *all* liquor exported from the country"; and that the Government has authorized a separate account to be kept of all distilled spirits exported from the country upon which "it returns to the distiller, producer, blender, or bottler, an allowance of three pence" (R. 49). The reports from the American consul at Edinburgh, Scotland, also indicate that the allowance is paid on all spirits exported from the United Kingdom (R. 40-43).

If there had ever been an exportation of potable spirits without an allowance, doubtless petitioners

would have proved the fact. They offered no such proof. The presumption is against them on these appeals.

II.

The argument that the allowance is paid because of the "patriotism" of the distiller who "voluntarily" submits to extra expense is grotesquely fanciful.

Contrasting (a) an exportation from a spirit store or a distiller's warehouse against (b) an exportation from an excise or customs warehouse, the Shaw brief says that on the first the distiller could not, while on the second he would get an allowance. The brief asserts (p. 22) that the motive which influences the distiller's choice of the latter is "not the expectation of an allowance, but patriotism." The brief asserts that while the Government wishes to have spirits pass through excise or customs warehouses so as to get a second check upon the amount distilled, yet the Government refrains from compelling a double checking lest distillers regard that "as an unbearable interference with individual rights." The brief asserts that "the allowance by no means makes up for the loss and hindrance of subjecting the spirits to this second checking process"; and that the allowance is paid to prevent the distiller's "patriotism costing him too much money."

The brief's contention that the allowance is an offset to the cost of a "second checking process" differs from the British contention that the allowance does not equal the "loss caused to British distillers by the elaborate excise machinery" as a whole (R. 24, 26, 29, 31, 33-34, 35, 36, 37, 38, 39, 44, 47, 49, 50; section 42, p. 357, exhibit 4; p. 61, part 1, and p. 43, part 3, exhibit 2; p. 186, exhibit 3).

The brief's contention also conflicts with the statements on pages 4-5 and 10 of the petition for writs of certiorari, that the allowance is made to compensate the manufacturer for the enhanced cost of production resulting from the "statutory restrictions in connection with his plant and method of manufacture." The Nicholas brief (p. 2) still stands by that contention. That is the substance of the head note on page 19 of the Shaw brief, though a different position is taken in the following 10 pages of argument.

The Shaw brief further asserts (p. 24) that the spirits which are to "go into domestic potable consumption are *compelled* to be submitted" to the double checking. (Italics copied.) Whether destined for home consumption or for exportation, the regulations respecting the delivery of spirits out of warehouse are the same (sections 483-505, 513-526, 537-570 of The Warehousing Code on pp. 444-448, 449-452, 454-460 of exhibit 4).

The minutiae of the Spirits Act of 1880 and of the Warehousing Code (pp. 355-467, exhibit 4) show that Great British has not jeopardized its

revenue out of fear that distillers might regard its regulations as "an unbearable interference with individual rights." It recognizes that there is no such "patriotism" as will prevent attempts to cheat the government out of its revenue (pp. 360, 404-406, exhibit 4).

The argument that the allowance of 3d. is paid because of the "patriotism" of those *distillers* who "voluntarily submit" to a "second checking process" overlooks the fact that an allowance of 5d. is paid to *rectifiers*. As has already been pointed out herein, no operations are permitted in a spirit store and the processes employed in the production of rectified and compounded spirits are not permitted in a distiller's warehouse. The spirits used by rectifiers are subject to checking not only before they leave the distiller's premises but also after receipt by the rectifier (section 90, Spirits Act of 1880). In respect of rectified spirits a second checking is obligatory. Hence rectified spirits are not "voluntarily" submitted to a double checking process; and the payment to rectifiers is not because of their "patriotism." The 2d. in the allowance paid to rectifiers additional to that paid to distillers is because of the restrictions imposed on rectifiers (R. 35-36, 44, 47). The instant cases involve gin upon the exportation of which the allowance of 5d. was paid.

III.

The allowance is paid to assist the British producer who is manufacturing spirits for the foreign market.

The Shaw brief says (p. 20) that "Mr. Gladstone, at some length, pleaded before the House of Commons, the right of distillers and rectifiers to such limitation of the imposed burdens as would not interfere with the effectiveness of the regulations." The brief cites no authority for either Mr. Gladstone's exact statement or the brief's interpretation thereof. Citing pages 1705-7, volume 156, 3d series, Hansard's Parliamentary Debates, the Nicholas brief (p. 4) quotes Mr. Gladstone as saying in 1860 that he intended to propose a limited allowance "in consequence of the disadvantage under which the British distiller labored." Wrenched from their context, the quoted words do not convey the full import of the statement made by the Chancellor of the Exchequer. After stating the proposed duties on spirits, he is reported as saying (p. 1706):

> To make the information complete, he would state that it was the intention of the Government, in consequence of the disadvantage under which the British distiller labored *in endeavoring to manufacture spirits for the foreign market,* to propose a limited allowance *on the export of British spirits* over and

> above the amount of export duty ruling; that allowance was as follows: on raw and unrectified spirits, 2d. per gallon; on rectified and potable spirits—that was, spirits prepared for consumption—3d. per gallon. (Italics ours.)

The statute subsequently enacted in 1860 provided for the payment of an allowance to the distiller or proprietor of spirits "on the exportation thereof from a duty-free warehouse, or on depositing the same in a customs warehouse"; and also for the payment of an allowance to a licensed rectifier on his depositing "in a customs warehouse" spirits distilled and rectified in the United Kingdom. The record now here is silent as to the conditions under which, or the purpose for which, spirits were deposited in a customs warehouse in 1860; but it is a fair inference that spirits were then so deposited for substantially the same reasons as they are now so deposited. The statement by the Chancellor of the Exchequer indicates that the sole purpose of the Government in proposing the allowance was to aid the *exporter* of British spirits.

A statement made jointly by the Chairman and Deputy Chairman of the British Board of Customs and Excise in 1911 shows that such was the purpose of the statute (R. 29). In another joint statement they said that the "object with which they [the allowances] were introduced by Mr. Gladstone in 1860" was "that they should recoup *the exporter*" (R. 36).

By section 12, 28 and 29 Vict., chapter 98, 1865 (Ex. 1-b), the allowance granted by the act of 1860 was extended to compounded spirits deposited in any warehouse of customs or excise

> and *exported to foreign parts, or used in a customs warehouse for fortifying wines or for any other purpose to which foreign or colonial spirits may be applied* under the laws or regulations of the customs.

Here again was expressed the purpose to aid the British exporter. The allowance was also payable upon British spirits "used in a *customs* warehouse for fortifying wines or for any *other* purpose to which *foreign or colonial* spirits may be applied *under the laws or regulations of the customs.*" The uses to which spirits could be put in a customs warehouse in 1865 does not appear in the record; but clearly use for fortifying wine was one of those uses and that was one of the uses to which foreign spirits could be put. As *customs* warehouses were specified, it is probable that the operations had to do with merchandise which could be exported duty free. As that statute has been repealed we have no further interest therein.

The acts of 1860 and 1865 were repealed by the Customs and Inland Revenue Act of 1885, section 3 of which grants the allowance on two classes of spirits, viz., (1) those "exported from an excise or customs warehouse"; and (2) those "used in any such warehouse for fortifying wines, or for

any other purpose to which foreign spirits may be applied." The exported spirits compete with foreign spirits in foreign markets. The spirits used in warehouses also compete with foreign spirits—certainly in foreign markets and to some extent in domestic markets. Many and indeed most of the uses to which British spirits may be put in warehouses are in preparing wines and spirits for exportation (sections 321, 323, 337, 361, 364, and 402 of The Warehousing Code, on pages 415, 416, 417, 421, 422 and 428 of exhibit 4). In addition they may be used in fortifying wine for home consumption (section 354 of The Warehousing Code, on page 420, exhibit 4); but foreign spirits also may be used for that purpose (section 358 of The Warehousing Code on page 421 of exhibit 4). Thus we see that the only spirits upon which the act of 1885 grants the allowance are those which come into competition with foreign spirits, and that for the most part that competition is in foreign markets.

In the instant cases we are little concerned with the allowance on *industrial* spirits. It is interesting only so far as it throws a light on the purpose for which an allowance is granted on *potable* spirits. Section 6 of the Finance Act of 1895 granted an allowance "to the exporter" of methylated spirits; and the Revenue Act of 1906 broadened the allowance on industrial spirits. In 1905 evidence was given before the Industrial

Alcohol Committee of the British Customs and Excise Department by "Mr. Nicholson of J. W. Nicholson and Son of London, a leading firm of distillers." He testified (R. 36):

> The 3d. *allowed for export* is very insufficient. We have no chance in a neutral market, and it is only, generally speaking, where British spirits is asked for that we can get a chance of competing." (Italics ours.)

That testimony does not seem to be in accord with the contention of the Shaw brief (p. 29) that the British exporter would make a greater profit if he received no allowance on his exported spirits.

In the same year that Mr. Nicholson testified the Committee on Industrial Alcohol made a report in which it was pointed out

> that for all industries using alcohol the price of the spirit is an important factor *for that portion of the trade that lies outside of the home market* (R. 33).

The committee recommended an allowance (R. 34); and thereafter was enacted the Finance Act of 1906, which gave to spirits used for making industrial methylated spirits and to other industrial spirits a "like allowance" to that "payable on the *exportation* of plain British spirits." The British representatives cite the 1905 report as "evidence of the object and policy" of the allowances on exported potable spirits (R. 30-31).

In 1914 a representative of the Scottish Whisky Exporters Association stated to the British Secretary of State for Foreign Affairs that the allowance had been given to aid the British distiller in his competition with foreign distillers in foreign markets (R. 50).

British spirits are given protection in the home markets by the excess of customs duties over the excise duties (R. 24). The excise duty is 14s. 9d., and the customs duties on spirits imported in casks range from 15s. 1d. to 15s. 3d. When imported in bottles the customs duties are 1s. higher. Protection has been thus accorded to British spirits ever since 1860 (R. 51). On few classes of spirits is the excess the exact equivalent of the allowance on similar classes of British spirits.

Protection to British spirits is given by the eighth section of the Finance Act of 1902, which permits spirits (both British and foreign) to be used in art and manufacture without the payment of duty. That section contains a proviso that foreign spirits may not be used duty free "until the difference between the duty of customs chargeable thereon and the duty chargeable on British spirits has been paid."

The Nicholas brief truly says (pp. 16-17) that ever since 1860 there has been a progressive purpose manifest to confine the excise tax to "spirits which go into domestic *potable* consumption." It also says that "all spirits not so destined" not only escape the tax but get the allowance. The exact facts may be stated as follows: Before 1895 only

potable spirits received the allowance; and they received it only when they were either to be exported or to compete with foreign spirits. In 1895 the allowance was extended to the exporter of methylated spirits. In 1902 exemption from excise duties was granted to spirits used in art and manufacture; and in 1906 the allowance was extended to spirits so exempted and to all spirits used for making industrial methylated spirits. This extension (in effect a reduction of the cost of producing industrial alcohol) was because "the price of the spirit is an important factor for that portion of the trade that lies outside the home market."

The allowance was instituted in 1860 to aid (using the words of Mr. Gladstone) "the British distiller * * * endeavoring to manufacture spirits for the foreign market"; and every extension of the allowance has been to aid producers who are engaged in the same endeavor.

At pages 29-30 of the Shaw brief it is argued that the allowance is not an allowance upon exportation, because on compounded spirits exceeding eleven degrees over proof the allowance is payable upon the deposit thereof in warehouse. Spirits of that strength may not be used for home consumption (p. 447, exhibit 4); and deposit thereof in warehouse is merely a step preliminary to the exportation thereof.

The Shaw brief cites no authority for its statement (p. 28) that the allowance would be paid if spirits "were thrown into the Atlantic ocean."

On page 29 of the Shaw brief it is asked why in T. D. 34466 the Secretary of the Treasury expressly excepts methylated spirits from the countervailing duty. The answer is obvious. Under the Revenue Act of 1906 the allowance on methylated spirits applies generally, that is, whether the spirits are used in the United Kingdom or exported. Our Government levies a countervailing duty only when the British exporter is given an advantage which he does not enjoy at home. We levy a countervailing duty on potable British spirits because the British government rewards the exporter for and upon exportation.

IV.

The Allowance is Not a Drawback.

The Nicholas brief refers to the expense to which the British manufacturer is put by the system of excise surveillance as "an additional excise tax" (p. 30) and as a "surtax" (p. 49); and it argues (pp. 42-43) that in remunerating the manufacturer for the extra expense the Government is paying him a drawback.

Wharton's Law Lexicon, 12th Ed., defines "drawback" as "a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it." That is also the effect of the definition in the British Warehousing Code (p. 357, exhibit 4). (See also Second Schedule of Finance Act, 1902.) Obviously the British allow-

ance on exported spirits is not a drawback because it is not a repayment of any tax previously paid to the Government.

V.

The allowance is a bounty or grant.

The simple issue in these cases is whether the allowance which the British government pays to the exporter of potable spirits is a bounty or grant under paragraph E, section IV, tariff act of 1913. That paragraph provides that whenever any country shall pay or bestow any bounty or grant "upon the exportation of any article or merchandise from such country, * * * and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States," the additional duty therein provided for shall be imposed, "however the same [the bounty or grant] be paid or bestowed."

The "article or merchandise" upon which countervailing duty was levied is whiskey and gin—some in bottles, some in casks. Whisky is a product of distillation which by blending, etc., etc., is made usable as a beverage. Gin is a product of distillation which by redistillation in the presence of flavoring substances becomes usable as a beverage.

The Nicholas brief says (p. 2) that the allowance is paid to compensate the manufacturer, at least in part, for "extra expenses, which are no part of the

normal cost of manufacture, and which the Government for its own ends requires him to incur." For revenue purposes the British government does require distillers and rectifiers so to conduct their businesses that their costs of manufacture are enhanced. So also do our State regulations for the reduction of fire hazards, for the protection of laborers, etc., increase costs of production in this country; but no one would say that compliance with such regulations does not enter into the natural costs of production. Neither would one say that the entire cost of raw materials is not a part of the normal cost of American products, on the ground that the cost of raw material is enhanced by our protective tariff. It is submitted that the natural cost of an article is the cost of making that article ready for the market under the conditions normally obtaining at the place of production.

Recognizing that there is an "enhanced cost due to excise control" which is a "disadvantage" to its producers "endeavoring to manufacture spirits for the foreign market," the British government pays an "allowance" by which "the enhanced cost is neutralized for exports." To illustrate: Upon a proof gallon of plain spirits which it cost 9d. to manufacture in 1905, the Government pays to the exporter upon exportation 3d. Hence the net manufacturing cost is reduced by that amount. The net cost of exported plain spirits is about two-thirds of the cost of similar spirits sold at home. British distillers and blenders can enter our American

markets upon better terms than they can enter their domestic markets. Because of government aid they can sell here at a less price or at a greater profit than they can sell at home. With the aid of the allowance they go into foreign markets and sell a part of their product. If they could compete in those foreign markets without the allowance, surely the allowance is a bounty. If they could not compete without the allowance, it is still a bounty.

On the assumption that the allowance is no more than that part of the cost of production chargeable to excise regulations, the British Ambassador argues that "where there is no net benefit there can be no bounty or grant" (R. 25). Were it to be conceded in principle that compensation for the disadvantage of the excise regulations is not a bounty or grant, still the United States would not be concluded by the fact that the British statute specifies an arbitrary amount as the measure of the damage caused by the excise hindrance. It would be for the United States to determine the actual measure of the damage; and the excess of the allowance over the actual damage (if there be an excess) would be the amount to be countervailed. Otherwise, foreign nations seeking to foster their industries by bounties and grants would have a ready method of disguising their bounties and circumventing our countervailing duty law. They could accomplish that end by a legislative declaration that the bounty paid directly to an exporter upon exportation was merely compensation for

some hindrance caused by governmental regulations.

In the instant cases the British allowance was instituted by a statute which declared that it was granted "in consideration of the loss or hindrance caused by excise regulations"; but the Chancellor of the Exchequer had declared the intention "to propose a limited allowance on the export of British spirits" because of the disadvantage under which the British distiller labored "in endeavoring to manufacture spirits for the foreign market."

But in the words of the British Ambassador there has been "a net benefit" to British producers. They are able to sell in foreign markets at less prices than they can sell in their home markets. It is possible that without the allowance they would not be able to sell in foreign markets at any price. The American consul at Edinburgh reports that the allowance has "enabled distillers and blenders largely to extend their trade abroad" (R. 43). Statistics in the Encyclopaedia Britannica show that the amount of spirits distilled in the United Kingdom increased from 37,412,170 proof gallons in the year 1880 to 50,317,908 proof gallons in the years 1906-7, an increase of about 35 per cent. In the same period the amount of spirits exported increased from 1,704,204 proof gallons to 7,341,077 proof gallons, an increase of over 330 per cent. (See Appendix B.)

The American consul reported from Edinburgh that the manufacturing chemists and other users

of neutral spirits, dealers in wines, and those whisky dealers who are not exporters regard the allowance as purely a bounty or grant (R. 43). The only answer to that which the British representatives make is that those traders have no interest in the matter; that probably few of them are aware that there is such an allowance; and that still fewer are acquainted with the grounds on which the allowance is granted (R. 44, 48).

While it may be that outside the fraternity of spirits-producers there are few who know about the allowance, yet there seem to be some who do. The public statutes cannot be concealed. It may be that fiscal reports showing the payments arouse public discussion. It is natural that domestic users and whisky dealers should be interested in the matter—especially so if the exportation of large quantities enables producers to keep the domestic prices at a high level.

That the British Government feels itself under a moral obligation to make it easier for British producers to compete in foreign markets does not change the nature of the allowance.

> Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.
>
> *Allen v. Smith*, 173 U. S. 389, 402.

Granting that from the British standpoint the allowance is simply to save the British producer from being placed "in a position of disadvantage as compared with his foreign or colonial competitor" (R. 51), yet (in the language of the Circuit Court of Appeals in *United States v. Hills Bros. Co.*, 107 Fed. 107, 109) "from the standpoint of *other countries*" the allowance is a bounty or grant upon exportation.

Though the intent of the British government is interesting, yet we are more interested in the effect of the British allowance. In *Henderson v. The Mayor,* 92 U. S. 259, 268, Mr. Justice Miller laid down this principle:

> In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.

As to the nature of a bounty, this court said in the Russian sugar bounty case (*Downs v. United States,* 187 U. S. 496, 502):

> A bounty may be direct, as where a certain amount is paid upon the production or exportation of particular articles, of which the act of Congress of 1890, allowing a bounty upon the production of sugar, and Rev. Stat. sections 3015-3027, allowing a drawback upon certain articles exported, are examples; or indirect, by the remission of taxes upon the exportation of articles which are subjected to a

> tax when sold or consumed in the country of their production, of which our laws, permitting distillers of spirits to export the same without payment of an internal revenue tax or other burden, is an example. *United States v. Passavant*, 169 U. S. 16.

The Downs case originated before the Board of General Appraisers. The difference between the scope of "bounty" and "grant" was considered by Judge Somerville, a member of that board, in an elaborate opinion which was later adopted by the Circuit Court of Appeals in *Downs v. United States* (113 Fed. 144, 146). Judge Somerville said:

> These cases are cited for the purpose of illustrating the broad and comprehensive meaning of "grant," which differs in many respects from "bounty." While it involves the idea of a favor or benefit conferred by the Government, sometimes of an exclusive character, it does not necessarily embrace the act of appropriating or paying money out of the public treasury. Indeed, the word "grant," in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government. * * * A law enacted by the sovereign power, remitting the tax due by a citizen for a single year or a specified number of years, in consideration of his rendering a service or engaging in an enterprise deemed of advantage to the public,

would unquestionably be construed to be a "bounty or grant," as fully as if the like amount of money had been actually collected and refunded under the technical name of a bounty.

Downs' case, G. A. 4912, T. D. 22984.

Petitioners' brief in the Nicholas case seems to attempt (p. 40) to limit the effect of the term "grant" and to contend that it means little more than "bounty." In paragraphs 237 of the tariff act of 1890 (26 Stat. 567, 584) and 182½ of the tariff act of 1894 (28 Stat. 509, 521) relating to countervailing duties on sugar, Congress used only the word "bounty." Section 5 of the tariff act of 1897 (30 Stat. 151, 205) broadened the countervailing duty provision. Therein Congress used the additional verb "bestow" and the additional noun "grant," thus manifesting a purpose to make the provision broad and all-inclusive. The purpose of Congress to cover everything in the nature of a bounty or grant is expressed in the language "shall pay or bestow, directly or indirectly, any bounty or grant," and again, "however the same be paid or bestowed."

The countervailing duty paragraph now under consideration first appeared on our statute books as section 5 of the tarriff act of 1897 (30 Stat. 205). Thereunder a countervailing duty was levied on sugar imported from the Netherlands. The assessment was affirmed by the Circuit Court of Appeals in

United States v. Hills, 107 Fed. 107.

Thereunder also arose

Downs v. United States, 187 U. S. 496

wherein the court affirmed the assessment of a countervailing duty on sugar imported from Russia. The facts in that case and in the cases at bar are not parallel. The Russian bounty was ~~levied~~ by a most indirect, round-about method under laws which were very complicated and not easily understood. However, the general principles laid down by this court are applicable in the case at bar, and it may not be amiss to make the following quotation (187 U. S. 496, 512):

> It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid, not upon exportation, but upon production. The answer to this is that every bounty upon exportation must, to a certain extent, operate as a bounty upon production, since nothing can be exported which is not produced, and hence a bounty upon exportation, by creating a foreign demand, stimulates an increased production to the extent of such demand. Conversely, a bounty upon production operates to a certain extent as a bounty upon exportation, since it opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home. A protective tariff is the most familiar instance of

this, since it enables the manufacturer to export the surplus for which there is no demand at home. If there were no tariff at all, and the expense of producing a certain article at home were materially greater than the expense of producing the same article abroad, there would be none produced, and, of course, none to export. But with the aid of such tariff production would be stimulated, and might become so much greater than the home demand, that a manufacturer would look to foreign markets for his surplus. In the case of Russian sugar the effect of the import duties is much enhanced by the fact that, the supply of free sugar from the home market being limited, the selling price is very remunerative, and each producer has therefore an interest in placing as much sugar as he can on the home market; and as the total amount of free sugar is distributed among all the manufactories in proportion to their entire production, it may become to their interest to export their surplus even at a loss, if such loss can be compensated by the profits on sugar sold in the home market. This would not make a tariff a bounty upon exportation, but a mere incident to its operation upon production. But, if a preference be given to merchandise exported over that sold in the home market, by the remission of an excise tax, the effect would be the same as if all such merchandise were taxed, and a drawback repaid to the manufacturer upon so much as he exported. If the additional bounty paid by Russia upon exported sugar were the result of a high pro-

> tective tariff upon foreign sugar, and a further enhancement of prices by a limitation of the amount of free sugar put upon the market, we should regard the effect of such regulations as being simply a bounty upon production, although it might incidentally and remotely foster an increased exportation of sugar; but where in addition to that these regulations exempt sugar exported from excise taxation altogether, we think it clearly falls within the definition of an indirect bounty upon exportation.

The Russian bounty case was summed up in a single sentence in the opinion (187 U. S. 515):

> When a tax is imposed on all sugar produced, but is remitted upon all sugar exported, then, by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation.

The British allowance is paid directly to exporters upon their exportation of potable spirits. The allowance "by creating a foreign demand, stimulates an increased production to the extent of such demand." The allowance "opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home."

The controlling factor is the effect or result of the operation of the foreign law. Neither the name ascribed by the foreign government to the payment

nor the method of payment is controlling.

Myers v. United States, 140 Fed. 648; affirmed *Myers v. United States*, 144 Fed. 1021;

Heckendorn v. United States, 162 Fed. 141; writ of certiorari denied *Heckendorn v. United States*, 214 U. S. 514.

VI.

There has been no long-continued executive construction of the countervailing duty statute, followed by legislative re-enactment, of which petitioners can now avail themselves.

Though the British allowance was instituted in 1860, yet it was not until 1897 (30 Stat. 151, 205) that the Secretary of the Treasury was empowered to ascertain, determine, and declare the net amount of the bounty or grant. The record indicates that the Secretary of the Treasury did not know of the allowance until he received a copy of the British statute in 1910.

After the enactment of the tariff act of 1897, the State Department instructed consular and diplomatic officers in various foreign countries to furnish information as to bounties granted by the several governments. Copies of the reports received were furnished to the Treasury Department; but among them there was none relating to the United Kingdom of Great Britain and Ireland (pp. 584 et seq., No. 219, December, 1898, Vol. 58 U. S. Consular

Reports). While in a report dated in 1904 the consul at Edinburgh made some reference to the allowance (R. 40), yet it does not appear that the Secretary of the Treasury ever knew of that report.

In March, 1910, the consul requested information whether a countervailing duty was levied upon British whisky imported into the United States (R. 40). In April, 1910, in obedience to instructions (seemingly given at the request of the Treasury Department), the consul transmitted to the State Department copies of various British statutes (R. 40). (The number of the April report and the reference thereto in the report of August 5, 1913, show that the April report was in 1910 and not in 1911.) In June, 1910, he transmitted other information (R. 41).

It appearing to the Secretary of the Treasury "from certain laws of the United Kingdom of Great Britain and Ireland, copies of which have been transmitted to the department by the Secretary of State, that export bounties are paid by that country" on spirits, the Secretary of the Treasury on January 21, 1911, instructed the collection of additional duties under section 6 of the tariff act of 1909 (T. D. 31229).

As the Nicholas brief says (p. 14), this decision "was no doubt due to the despatches" of the consul.

T. D. 31229 was the first ruling by a Secretary of the Treasury upon the effect of the British allowance. It was made while the tariff act of 1909 was in force. There had been no administrative decision

while the tariff act of 1897 was in force; but in 1901 and in 1903, respectively, final decisions had been rendered in *United States v. Hills* (*supra*) and *Downs v. United States* (*supra*) wherein the Supreme Court and a Circuit Court of Appeals had approved the levying of countervailing duties under the act of 1897. In 1901 there had been another decision by the Board of General Appraisers to the same effect (*Bailey's case*, G. A. 5012, T. D. 23325). All those decisions were rendered before the re-enactment of the countervailing duty provision as section 6 of the tariff act of 1909 (36 Stat. 11, 85), under which the Secretary's decision was made in January, 1911. That decision was in harmony with prior judicial determinations.

The British ambassador urged the Secretary to reverse himself (exhibits 5 and 6, R. 23-39). On April 18, 1911, the Treasury Department, having considered the arguments advanced by British representatives, concluded that the allowance is not a bounty or grant. Accordingly T. D. 31299 was revoked (T. D. 31490).

The Shaw brief cites no authority for its statement (p. 52) that the Attorney General "approved T. D. 31490 revoking 31,229."

On August 5, 1913, the American consul made a further report concerning the allowance (R. 42); and this report seems to have been forwarded to the Secretary of the Treasury (T. D. 34466). Further information was submitted to the Secretary by the British ambassador (exhibits 8, 9, 10 and 11,

R. 43-51). With a mass of information in hand the Treasury Department "after further careful consideration of the matter" was of the opinion that the allowance is a bounty; and it was ordered that countervailing duties be "reimposed" (T. D. 34466). The treasury decision recognized that the question is one fitted for judicial determination, and instructed collectors of customs to direct the attention of importers to their remedy by way of protest.

Between the revocation of the countervailing duty in 1911 and its reimposition in 1914, the countervailing duty provision had been reenacted in the tariff act of 1913.

The mind questions the soundness of the assertion in the Nicholas brief (p. 16) that from 1897

> until 1914, for a period of 17 years, the departmental practice was consistent in viewing this allowance, not as a bounty or grant within the meaning of our tariff laws.

The mind wonders where that brief finds its "long-continued and uniform practice, and legislative reenactment in the face of that practice."

The mind fails to grasp the "striking parallel" which the Nicholas brief finds (p. 15) between the facts in the instant cases and the facts in *Copper Queen Consolidated Mining Company v. Arizona Board,* 206 U. S. 474. In that case a statute had been reenacted after it had "notoriously" received a certain construction in practice for 18 years.

Neither does the mind see that the facts now here are parallel with the facts in *United States v. Midwest Oil Company*, 236 U. S. 459, upon which the Nicholas brief relies. In that case the question was whether the President had power to withdraw public lands from entry under certain statutes. It appeared that during 80 years (without express authority but under a claim of power so to do) the President had made a multitude of Executive Orders which operated to withdraw public land that otherwise would have been open to private acquisition. In the light of the legal consequences flowing from that long continued practice, it was held that the President had power to make the similar order then under consideration.

The countervailing duty provision had been definitely construed and applied by the Treasury Department from 1897 and construed and applied by the courts in 1901 and 1903. In 1911 the Treasury Department hesitated about applying it to British spirits exported from the United Kingdom. The Board of General Appraisers said (R. 21):

> So we conclude in the case at bar that paragraph E having been, in our judgment, definitely construed by this board in Downs' case, supra, and by the Supreme Court in Downs v. United States, supra, it was the construction there given the law which Congress is presumed to have adopted rather than that given it in the brief letter of the Assistant Secretary of the Treasury.

The long-deferred action of the Secretary of the Treasury in ascertaining, determining and declaring the net amount of the bounty or grant paid or bestowed by the Kingdom of Great Britain and Ireland presents no reason why our Government should not now levy and collect the additional duty prescribed by paragraph E, section IV, tariff act of 1913. The failure of an executive department to enforce a statute does not effect a repeal thereof.

> *Merritt v. Cameron,* 137 U. S. 542, 551-552.

In *Pacific Creosoting Co. v. United States,* 1 Ct. Cust. Appls. 312, the importer objected to the assessment of duty upon certain metal drums which contained creosote oil. For a number of years some customs officers had been passing the drums free of duty as usual containers, but in due course changed the practice and assessed duty upon the theory that the drums were unusual containers. Judge Hunt, writing the opinion of the court, said, (p. 315):

> Nor can the argument that for years the customs officers at Pacific coast ports failed to tax metal drums prevail, for the reason that under the evidence, as we read it, the practice of not assessing the duty upon metal drums such as are involved in the case under consideration was clearly illegal and therefore cannot be sanctioned without positive violence to the law.
>
> The inconvenience to follow a decision holding that the metal drums are dutiable may

> cause annoyance to some importers, but can not be allowed to defeat the text and spirit of the law.

In *Gulbenkian v. United States*, 175 Fed. 860, an action was brought to recover certain alleged illegal duties assessed on certain importations of wools by reason of an alleged improper and illegal mode of invoicing forced on the claimants. In an elaborate and interesting opinion the following appears (p. 866):

> I do not think that years of illegal practice in classifying goods and assessing the duties thereon in any way bars the United States from changing to the legal method.

The Nicholas brief (p. 7) cites several decisions holding that when a statute of doubtful meaning comes up for a judicial construction, long-continued executive construction is to be given weight. Those cases are not in point. The countervailing statute is not of doubtful meaning. The question now before this court is whether there exist facts which bring that statute into operation. This court is not asked to construe paragraph E, but to apply it.

Conclusion.

The judgments of the Court of Customs Appeals should be affirmed.

BERT HANSON,
Assistant Attorney General.

December, 1918.

APPENDIX A.

(T. D. 34466.)

Treasury Department, May 25, 1914.

To collectors and other officers of the customs:

Your attention is invited to T. D. 31229 of January 21, 1911, imposing countervailing duties on certain British spirits equivalent to the export allowances granted by the Government of the United Kingdom of Great Britain and Ireland and to the revocation of that decision in T. D. 31490 of April 18, 1911.

The Secretary of State has transmitted to the department a consular report which furnishes additional information in the matter and the Attorney General has stated that the question of whether the said export allowances are bounties within the meaning of paragraph E of section 4 of the tariff act of October 3, 1913, is one better fitted for judicial determination than for an expression of his opinion.

The department, after further careful consideration of the matter, is of the opinion that the allowances in question (except that on "methylated spirits") constitute export bounties within the meaning of said paragraph of law. Countervailing duties are, therefore, reimposed in regulations as follows:

REGULATIONS.

Definitions.

1. The British commissioners of customs and excise have furnished the American embassy at London with the following definitions:

(a) Plain British spirits.

Section 3 of the spirits act, 1880, enacts that—

"Spirits" means spirits of any description and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits.

"British spirits" means spirits liable to a duty of excise.

"Plain spirits" means any British spirits (except low wines and feints) which have not had any flavor communicated thereto or ingredient or material mixed therewith.

NOTE.—Low wines and feints are impure spirits, the product of distillation which never leaves the distillery in such state.

(b) Spirits in the nature of spirits of wine.

Section 3 of the spirits act, 1880, enacts that—

"Spirits of wine" means rectified spirits of the strength of not less than 43° above proof.

NOTE.—There is no specific definition of "spirits in the nature of spirits of wine," but

in practice the words are interpreted as identical with the words "spirits of wine," as above defined.

(c) British compounded spirits.

Section 3 of the spirits act, 1880, enacts that—

"British compounds" means spirits redistilled or which have had any flavor communicated thereto or ingredient or material mixed therewith.

2. The Bureau of Standards, Department of Commerce, has advised the department that 1 British gallon of British proof spirit (ascertained always with Syke's hydrometer) is equal to 1.2009 United States gallons of spirit, 114.4 per cent United States proof, or 1.374 United States proof gallons.

Additional duties to be collected.

3. Collectors of customs shall collect on the following-named articles, when imported directly or indirectly from the United Kingdom of Great Britain and Ireland, additional duties under paragraph E of section 4 of the tariff act of October 3, 1913, equivalent to the export bounties paid by that country, as follows:

(a) On "plain British spirits" and "spirits in the nature of spirits of wine" 3 pence per gallon, computed at hydrometer proof.

(b) On "British compounded spirits" 5 pence per gallon, computed at hydrometer proof.

Amount of bounty to be certified on invoices.

4. Consular officers will certify on every invoice of such spirits the exact amount of bounty which each item has received or is entitled to receive from the British Government.

Importers' remedy by way of protest.

5. Collectors will direct the attention of importers who may be dissatisfied with the assessment of additional duties hereunder to their remedy by way of protest under the provisions of paragraph N of section 3 of the tariff act of October 3, 1913.

Time of taking effect.

6. These regulations will take effect 30 days after date.

(75418) CHAS. S. HAMLIN, Acting Secretary.

(T. D. 34752.)

Treasury Department, September 4, 1914.

To collectors and other officers of the customs:

The department has received inquiries from collectors as to how certain brands of British spirits

should be classified for the assessment of countervailing duty under T. D. 34466 of May 25, 1914.

Collectors are informed that there is no need for the publication of lists of the brands of British Spirits showing their classification, respectively, as "Plain British" or "compounded" spirits, inasmuch as the British commissioner of customs and excise has stated that but one article, namely, whisky (Scotch, Irish, and all other brands) receives upon exportation from Great Britain the lower allowance of 3d. per gallon, all other spirits not methylated spirits coming under the head of "compounded" and receiving the higher allowance of 5d. upon exportation from Great Britain.

As a general rule this information should be followed, therefore, in classifying British spirits for the purpose of assessing countervailing duty. Where, however, the consul has made a notation on the invoice which indicates an exception to this rule, liquidation should be suspended and the papers forwarded to the department for instructions.

Wm. P. MALBURN, Assistant Secretary.
(75418.)

APPENDIX B.

Excerpt from page 803, volume 32, 10th edition, Encyclopaedia Britannica:

The following figures regarding the gallonage, excise duty, exports, etc., need no explanation:

UNITED KINGDOM.

Year.	Quantity Distilled (Proof Gallon).	Duty Paid (Excise).	Exports (Proof Gallon).	Imports (Proof Gallon).	Remaining in Warehouse (Proof Gallon).
1880	37,412,170	£13,631,785	1,704,204	10,050,467	46,901,437
1885	41,006,486	13,987,472	2,588,078	11,755,518	64,405,817
1890	40,970,295	13,860,002	3,371,396	12,714,049	85,376,937
1895	44,870,357	16,195,664	3,854,102	10,211,068	108,195,402
1900	59,246,277	20,303,147	5,284,611	10,739,106	157,169,968

Excerpt from page 695, volume 25, 11th edition, Encyclopaedia Britannica:

The following figures regarding production, consumption, duty, &c., need no explanation:

UNITED KINGDOM.

1. Statistics regarding Home-made Spirits.

Year.	Total Quantity Distilled (Proof Gallon).	Total Consumption of Potable Spirit (Proof Gallon).	Consumption of Potable Spirit Per Head of Population (Proof Gallon).	Exports (Proof Gallon).	Retained for Methylation (Proof Gallon).	Remaining in Warehouse (Proof Gallon).	Duty Paid (Excise).
1895-1896	49,324,875	21,088,448	0.79	4,254,883	3,838,082	114,110,701	£16,380,134
1898-1899	63,437,884	34,334,084	0.85	5,090,290	4,781,369	151,732,539	17,967,142
1900-1901	57,020,847	36,703,728	0.89	5,773,718	5,070,713	161,502,829	20,124,003
1903-1904	51,816,600	34,103,111	0.80	6,334,971	5,054,586	167,155,504	18,667,818
1905-1906	49,214,165	32,486,958	0.75	7,049,798	5,663,429	163,519,957	17,765,352
1906-1907	50,317,908	32,511,316	0.74	7,341,077	6,055,285	161,648,409	17,745,125